

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
www.montgomerycountymd.gov/boa/**

CASE NO. A-6603

PETITION OF FRANK SALVAS, SR.

OPINION OF THE BOARD

(Opinion Adopted February 13, 2019)
(Effective Date of Opinion: February 27, 2019)

Case No. A-6603 is an application for a variance necessary for the construction of a garage. A variance of three (3) feet is needed because the proposed construction is within seven (7) feet of the left side lot line. The required setback is ten (10) feet, in accordance with MNCPPC #81910700 and Section 59-7.7.1.D.5.b.ii of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on February 13, 2019, after the originally scheduled January 30, 2019, hearing date was cancelled for weather. Petitioner Frank Salvas, Sr., appeared and testified in support of the requested variance, represented by Soo Lee-Cho, Esquire. Somer Cross, who was accepted as an expert in land planning, also testified in support of the variance.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 11, Block D, Sweepstakes Subdivision, located at 10441 Sweepstakes Road, Damascus, MD, 20872, in the R-200 Zone.
2. The Petitioner's Statement ("Statement") indicates that he is seeking to extend and enclose an existing carport. The Statement indicates that the existing carport is nine feet, three inches (9' 3") wide, and that the proposed enclosed garage would be twelve feet, eight inches (12' 8") wide, which is three feet, five inches (3' 5") wider than the existing carport. The Statement indicates that the enclosed garage would encroach three (3) feet into the required ten (10) foot side lot line setback.

3. The Statement notes that the proposed construction of an attached garage comports with the traditional development pattern of the street or neighborhood in satisfaction of Section 59-7.3.2.E.2.a.v, stating that the street or neighborhood “includes both one and two-vehicle attached garages,” and including photographs of adjacent properties which show that they have attached garages. See Exhibits 3 and 5(f)-(h).

4. The Statement states that the Petitioner lives with his wife and mother-in-law. The Statement details health issues suffered by these women, and indicates that the Petitioner is seeking to construct a 12’ 8” wide garage to allow “ample room for the full extension of car doors” so that the Petitioner’s wife and her mother can safely get in and out of their vehicles. See Exhibit 3.

5. At the hearing, Somer Cross, who was accepted by the Board as an expert in land planning, testified that she had mapped the neighborhood around the subject property to show the parking arrangements for all of the homes, indicating which homes had double car garages, which had single car garages, which had carports, and which had none of the above. Ms. Cross stated that the area surrounding the subject property contains lots of garages, particularly double car garages. The map that she prepared confirms this. See Exhibit 12. Thus Ms. Cross testified that the proposed development substantially conforms with the established historic or traditional development pattern of this street or neighborhood, in satisfaction of Section 59-7.3.2.E.2.a.v of the Zoning Ordinance. Ms. Cross then testified that the Petitioner had spoken with his immediate neighbors, and that they supported the grant of the requested variance, as indicated in their letters. See Exhibit 7(a)-(d). She testified that the special circumstances or conditions are not the result of actions by the Petitioner; that the Petitioner is seeking the space he needs and nothing more, and accordingly that the variance requested is the minimum needed; and that the applicable master plan has no guidance with respect to this property, and thus the variance can be granted without substantial impairment to that plan.

6. The Petitioner testified briefly regarding the reason he is seeking this variance, elaborating on the physical condition of his wife and mother-in-law, and their need to be able to safely traverse the distance between the house and their vehicles.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E.2 of the Zoning Ordinance, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.v. – the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

Based on the expert testimony of Ms. Cross, the photographs submitted with this variance application, and the assertions made by the Petitioner in his Statement, the

Board finds that having an enclosed garage as opposed to a carport substantially conforms with the established historic or traditional development pattern of this street and neighborhood, in satisfaction of this Section. See Exhibits 3, 5(f)-(h), and 12.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner is not responsible for the development pattern on his street or in his neighborhood, in satisfaction of this Section.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested three (3) foot variance is the minimum variance needed to permit the construction of a garage that would enable the subject property to comport with the established development pattern of this street and neighborhood, and thus to overcome the practical difficulties that would otherwise be imposed by full compliance with the Zoning Ordinance. In addition, the Board notes that the requested variance is the minimum needed to allow construction of a garage of sufficient width to allow car doors to fully open so as to meet the accessibility and safety needs of the Petitioner's wife and mother-in-law. While the Board has not included an analysis of this case under the Fair Housing Amendments Act of 1988 and under Title II of the Americans With Disabilities Act, as amended by the ADA Amendments Act of 2008, in this Opinion, the Board notes that there is adequate evidence in the record, not specifically recounted herein, to support the grant of a variance as a reasonable accommodation under those laws. The Board did not undertake that analysis because it was unnecessary given the Board's conclusion that the variance could be granted under Section 59-7.3.2.E of the Zoning Ordinance.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds, based on the Statement and on the testimony of Ms. Cross, that the requested variance, necessary to allow the construction of the proposed enclosed garage, would continue the residential use of this property and can be granted without substantial impairment to the intent and integrity of the Damascus Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that granting this variance would not be adverse to the use and enjoyment of abutting or confronting properties, as evidenced by the letters of support in the record at Exhibits 7 and 7(a)-(d), and as confirmed by Ms. Cross in her testimony.

Accordingly, the requested variance is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4(a)-(b) and 5(a)-(e).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Stanley B. Boyd, Vice Chair, with Bruce Goldensohn and Katherine Freeman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of February, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.
Board must be exercised.